Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.
INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.
LEGAL NEWS NOTES AND FACETIÆ.

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CASE AND COMMENT.

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Joseph H. Choate.

The career of a great lawyer, which is of never-failing interest to those of his own profession, and lives in traditions among them long after it is ended, rarely gains a national reputation unless he is also in public life. Yet within a few years past the name of Joseph H. Choate, which had long been eminent in New York and among lawyers, has become almost as well known throughout the United States as if he had filled the highest public positions for a generation.

His career is pre-eminently that of a lawyer yet his interest in public affairs has made him a frequent advocate of his party on the stump, without seeking any political rewards, and it led him to serve in the State Constitutional Convention of 1894. That convention made him its president and he guided its deliberations with unfailing courtesy, dignity, and success.

Joseph Hodges Choate is the youngest of the four sons of Dr. George and Margaret Manning (Hodges) Choate, of Salem, Massachusetts. He was born January 24, 1832. He was graduated from Harvard College in 1852 and from Harvard Law School in 1854. He was admitted to the bar of Massachusetts in 1855 and in the same year went to New York city. For a short time he had a partnership with W. H. L. Barnes, but in 1860 became a member of the firm of Evarts, Southmayd, & Choate, which is continued in the present firm of Evarts, Choate, & Beaman. Mr. Choate was married in 1861 to Caroline, a daughter of Frederick Sterling. They have had five children, of whom three only are now living.

In the social and the unofficial public life of New York city Mr. Choate is distinguished. He is constantly called upon to preside or to deliver addresses at meetings without number, from commencement exercises or the reception of distinguished strangers to meetings in the cause of art or philanthropy. He was president of the New England Society from 1867 to 1871, of the Harvard Club from 1874 to 1878, and of the Union League Club from 1873 to 1877.

The professional rank of Mr. Choate is indicated by the magnitude of the cases in which he is employed and the fact that his clients are found on the Pacific coast as well as in New York city. He was counsel in the great California Irrigation case just decided by the Supreme Court of the United States. Quite recently he won the case of Mrs. Leland Stanford, whom the United States sued for $15,000,000. He was also counsel in the Federal Income Tax case; and the other great cases which he has had in recent years would make a surprising list. Among the celebrated cases in which he appeared less recently, but which are still remembered, are the Cesnola case, involving the general honesty of the art collection of antiquities, and the Gen. Fitz John Porter investigation, in which he secured a reversal of the judgment of the original court-martial. Skilful and successful in argument before a court, he is not less so in the trial of jury cases. Courteous, good tempered, self possessed, but well armed with wit and ridicule, he has been called "the idol of jurors." No man who was not unusually complete and symmetrical could reach his un-

disputed eminence, both as a jury lawyer and as a profound and eloquent counselor before the highest courts.

As an orator Mr. Choate's fame is not equalled by that of any other man of his time who has gained his reputation chiefly in court. It has grown without much aid from public speeches until men in any portion of the country will fill a court room to hear him. The quality of his style is exceptionally pure, and it is matched by his fine personal presence. Grandiloquence, display, and all other meretricious vanities of an orator are absent. An eminent judge tells how the lawyers of a great western city thronged a court room to hear an argument by Mr. Choate, and how surprised they were in hearing it. Instead of a declamatory exhibition they saw an unassuming gentleman talking to the court. They heard an argument which was lucid in statement, clear in arrangement, and strong in structure, presented with directness, just emphasis, pure diction, and delightful simplicity of manner. His style of oratory does not mistake noise for emphasis, or painful effort for power, and it aims to convince rather than to thrill.

Now in the prime of his career the demand for Mr. Choate in the great battles of the law is increasing, and his reputation is still growing.

Unfair Taxation.

The unfairness of taxation gives a little basis for the belief that our government is run by the rich for their own advantage as against the poor. This incendiary belief, which is propagated chiefly by demagogues and among the ignorant, began to spread like contagion when the Federal Income Tax was defeated. It is the staple of many wild harangues full of lurid rhetoric and empty of facts. But there is danger of shutting our eyes to the kernel of truth in this belief because the demagogues and fanatics, in their desire to make a powerful impression, exaggerate the evils which exist, imagine others where none exist, blacken the fame of our nation by falsifying its conditions, conjure up the myth of a devilish plutocratic oligarchy as the secret power of government, assail pulpit and press as subsidized, charge bribery or cowardice on all who reject their own pernicious leadership, and with a distorted view of the facts malignantly attack as robbers all who have accumulated wealth, even when in so doing they have added to the prosperity of their community and the wealth of the nation. But partisanship, passion, intemperance, and falsehoods must not be allowed to kindle antagonistic passion or prevent us from seeing real grievances. One such is found in unfair taxation.

It is a truth that should shame every citizen, that the poor people pay much more than their fair share of the taxes. Without entering now upon disputed theories of the true mode or just basis of taxation, we can see the plain fact that, at least in many parts of the country, the percentage of the true value of their property which is paid by the poor is greater than that paid by the rich. It must be conceded that there are difficulties in getting at the true assessment of property. If assessors take the sum which the property would bring at forced sale they may quite easily name an amount for a small cottage of which possible purchasers are many, but it is not so easy to name an amount for a great block worth millions of dollars which no one who had the ability might be willing to buy at its real value. But with all reasonable allowance for such difficulties, it is still true and generally acknowledged that the average assessment of cottages or other small premises is higher in proportion to value than the assessment of great business blocks. One reason is that the owner of a small piece of property cannot afford to contest the assessment. The possible saving, if successful in his contest, would not pay the expense. But with great assessments, the possible reduction, even for a single year, may be worth fighting for; and besides that, the wealthy owner, unlike a poor man, can afford to pay out more than he can save in one year and wait for his recompense in the savings of years to come. For these reasons and others, among them the greater personal influence of wealthy men with assessors, it is a well-known fact that the homes of the poor pay more than a just share of the taxes.

Another and worse injustice is in the farcical taxation of personal property. All the poor man's property is usually in a little home. The rich man's wealth is often altogether, or chiefly, in personal estate. The poor man's home never escapes taxation; the rich man's personalty usually escapes in whole or in a large part. The total assessments of personal property in the city of Rochester, New York, are less than $6,000,000, while the real property is assessed at more than $100,000,000. Yet the personal property actually owned in that city, if it does not even exceed the real

Yours very truly
Joseph H. Choate

PORTRAIT SUPPLEMENT. — "CASE AND COMMENT."
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property in value, certainly does not fall far below it. This is only a sample of assessments elsewhere.

The unfairness is not in the laws but in their enforcement. Whatever changes we may have in our tax laws, the result will not be greatly better until they are fairly enforced. It would be harsh to say that we are a nation of tax shirks; but the percentage of tax shirks in our population is disgracefully large, and there is little public sentiment against tax evasion. Any organized conspiracy of the rich to favor their own class in this respect exists only in the imagination of gangrened brains. But through their individual selfishness, meanness, and dishonesty many rich people elude the burden of taxation, leaving it to fall more heavily on the weak shoulders of the poor. The fact does not condemn our system of government; it does not justify incendiary utterances; but it does call for a remedy. A quickened, intensified, and just public sentiment against the unmanliness and baseness of an attempt by the strong to cast their burdens on the weak is greatly needed. It would stimulate tax officers to respect their oath and do their duty, which they are afraid to do now. It might awaken some manliness in those of the rich who now sneak out of their just obligations, binding them upon the poor. Even if their honor could not be aroused, they might feel the sting of contempt. Certainly they would not dare to defraud justice and wrong the poor in the face of a fully aroused public. They know that the wrath of outraged justice may become injustice. In Switzerland the rich men themselves voluntarily favored the poor by reforming their law so that the larger an estate or income may be the higher shall be the rate or percentage of taxation. That law is not a dead letter or a farce in its execution. The rich Swiss pay their higher taxes without complaint. From them our tax shirks should learn a lesson, if not of patriotism, at least of prudence.

Alimony to the Husband.

In several states there are statutes giving a husband on divorce the right to claim alimony from his wife's estate. The late Nebraska case of Green *v.* Green, — L. R. A.—, 68 N. W. 947, decides that this right cannot exist in the absence of a statute granting it. Such was also the decision in a Kansas case, Somers *v.* Somers, 39 Kan. 132. But a contrary doctrine is vigorously asserted by Judge Gibbons, in the case of Groth *v.* Groth, decided in the circuit court of Cook county, Illinois, and reported in 7 Chicago Law Journal, page 359. He declares that "prior to the establishment of feudalism married women might hold and enjoy property; that this right was simply suspended under feudal rule, and when that rule was abolished it was unjust to enforce its consequences as against her." Now that the statutes have restored her to her ancient rights, he thinks there is no reason why the court should not now treat the subject exactly the same as if her rights had never been suspended. He says: "Every reason of right, justice, and morals is in favor of the proposition that the duties which the husband and wife owe to each other are reciprocal," and declares that the right of the wife to claim alimony *pendente lite* is not statute law, but simply court-made law. He quotes from Harding *v.* Harding, 144 Ill. 588, on this point: "To refuse to allow her reasonable support *pendente lite* would in many cases be to deny her the right to prosecute her suit altogether." Judge Gibbons says: "If it be good law in behalf of the wife, why not in behalf of the husband? To use a trite old phrase, 'What is sauce for the goose is sauce for the gander.'"

Aiding the Cubans.

What citizens of the United States may lawfully do to aid the Cubans in their struggle for freedom is a question of present interest. Activity in furnishing arms, ammunitions, and men to aid the rebellion in Cuba has led to a series of prosecutions for violation of U. S. Rev. Stat. § 5286, which declares: "Every person who within the territory or jurisdiction of the United States begins or sets on foot or provides or prepares the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state or of any colony, district, or people with whom the United States are at peace shall be deemed guilty of a high misdemeanor and shall be fined not exceeding $3,000 and imprisoned not more than three years." It is said by Chief Justice Fuller in Wiborg *v.* United States, 163 U. S. 632, — L. ed. —: "The statute was undoubtedly designed in general to secure neutrality in wars between two other nations or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of

such state of belligerency." He points out that the offense is defined disjunctively as committed by every person who within our territory or jurisdiction "begins, *or* sets on foot, *or* provides, *or* prepares the means for any military expedition or enterprise to be carried on from thence." The Supreme Court of the United States decided in that case that there is a prohibited military expedition or enterprise when men combine and organize in this country and are carried with arms and ammunition under their control by a tug 30 or 40 miles out to sea to a steamer on which they embark and drill and by which they are taken to Cuba, where they disembark to effect an armed landing on the coast with intent to make war against the Spanish government.

Other Federal courts have applied the law to somewhat similar circumstances. In United States *v.* Pena, 69 Fed. Rep. 983, it was held that the statute was not violated by shipping arms, ammunition, or military equipments, or leaving the United States as individuals, singly or in unarmed associations, for the purpose of joining in military operations on foreign soil. So in United States *v.* Hughes, 75 Fed. Rep. 267, the court holds that a merchant ship in legitimate commerce may carry passengers to Cuba and also carry boxes of arms and ammunition as merchandise at the same time; but that there would be a military enterprise within the prohibition of the act of Congress if the passengers after they came aboard the vessel took the arms from the boxes and organized themselves into a company or organization, or if they drilled or went through the manual of arms under the leadership or direction of one man or more.

To the same effect is United States *v.* O'Brien, 75 Fed. Rep. 900, expressly deciding that it is not a violation of neutrality laws for individuals to leave this country with intent to enlist in the Cuban army and that such persons may be lawfully carried as passengers on a vessel and that they may go separately on a regular line steamer or any other or charter a vessel or go separately or in association for the purpose of facilitating transportation, provided they do not form or set on foot any military expedition or enterprise or procure or prepare the means therefor. The same case holds that secrecy and mystery in the transportation of men and munitions do not render the transaction a violation of the neutrality laws when it is not done in aid of a military expedition or enterprise.

It is evident that under the law as laid down in these cases the question of combination and organization is an important part of the subject. With the law thus plainly interpreted there does not seem to be much to prevent Cuban sympathizers from furnishing all the men, munitions, and guns that they can procure, providing they can escape the Spanish ships. So far as the United States laws are concerned, the main thing is to avoid combining and organizing their men into a military expedition before they reach Cuba.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 33, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Appraisers.

A revocation of the appointment of appraisers to determine the value of lands under a contract for the purchase thereof at a consideration already paid is held, in Guild *v.* Atchison, T. & S. F. R. Co. (Kan.) 33 L. R. A. 77, to be beyond the power of either party.

Banks.

A special deposit of money at interest with a savings institution, the regular depositors in which are stockholders, is held, in Heironimus *v.* Sweeney (Md.) 33 L. R. A. 99, to be entitled to be repaid out of the assets, when the institution is insolvent, before any dividend to the regular depositors.

Boundaries.

A conveyance of land bounded "by a 5-foot passageway" is held, in Crocker *v.* Cotting (Mass.) 33 L. R. A. 245, to be exclusive of any part of the fee of the way, when it grants the use of the way in terms without mentioning any rights reserved, and refers for description to a deed conveying no part of such way, and a plan minutely specifying measurements and contents, which excluded the way, while the fee of one side of the way or a portion of its length remains in those who laid it out, and the parties by practical construction of their rights for a long time have treated the conveyance as excluding the way.

Burial.

The owner of a tomb who has permitted the remains of the dead to be deposited therein

on his assurance to the relatives that it might be a permanent resting place is held, in Choppin v. Dauphin (La.) 33 L. R. A. 133, to be without rightful authority to cause the removal of the remains therefrom.

Carriers.

The power of an express company to establish limits beyond which it will not collect or deliver packages carried or to be carried by it is sustained, in Bullard v. American Express Co. (Mich.) 33 L. R. A. 66, as against a person who has knowledge of such limits, and it is held immaterial that the limits extend farther from the office in one direction than in another.

An intoxicated person who refuses to go into a car when there is standing room inside, but goes down upon the steps of the platform without the knowledge of the conductor or other person in charge of the train, after he has been several times requested to come inside, and loses his balance when the car lurches in rounding a curve, is held, in Fisher v. West Virginia & P. R. Co. (W. Va.) 33 L. R. A. 69, to be guilty of such negligence on his part as will preclude any recovery against the carrier. His intoxication is held to be no excuse for his contributory negligence.

Liability of a street-railway company for the injuries received by a young woman who became suddenly ill while on the car, and, after twice requesting the conductor to stop it so she could get off, and on his failing to do so, became frightened and dazed on becoming worse, and staggered towards the rear of the car, and fell through the door unconscious, is held, in McCann v. Newark & S. O. R. Co. (N. J.) 33 L. R. A. 127, to be a question for the jury, involving questions of negligence of the carrier, her contributory negligence, and the proximate cause.

A constitutional provision making all railroad companies common carriers is held, in Wade v. Lutcher & M. C. L. Co. (C. C. App. 5th C.) 33 L. R. A. 255, to be inapplicable to a corporation organized for private business purposes which operates a railroad upon its own property for purposes connected with its business.

Case.

One who procures the discharge of an employee not engaged for any definite time, by threatening to terminate a contract between himself and the employer which he had a right to terminate at any time, is held, in Raycroft v. Tayntor (Vt.) 33 L. R. A. 225, to be not liable to an action by the employee for damages, whatever motive may have prompted him to procure the discharge.

Constitutional Law.

A reduction of the rates of a turnpike company by law is held, in Winchester & L. Turnp. R. Co. v. Croxton (Ky.) 33 L. R. A. 177, to be within the power of the legislature, and not a deprivation of property without due process of law, where it does not appear that the dividends will be thereby reduced, or, if so, to what extent.

A statute imposing a penalty for charging more than just and reasonable compensation for the services of a carrier, without fixing any standard to determine what is just and reasonable, is held, in Louisville & N. R. Co. v. Com. (Ky.) 33 L. R. A. 209, to be in violation of the constitutional provision against taking property without due process of law because it leaves the criminality of the carrier's act to depend upon the jury's view of the reasonableness of the rate charged.

Corporations.

A by-law restricting the transfer of shares of stock without first giving other shareholders and the corporation an option to purchase at a price named, is held, in Victor G. Bloede Co. v. Bloede (Md.) 33 L. R. A. 107, to be unreasonable and a palpable restraint upon the alienation of property.

A judgment against a corporation after its dissolution is held invalid in Marion Phosphate Co. v. Perry (C. C. App. 5th C.) 33 L. R. A. 252; and statutes continuing corporate existence after dissolution for the purposes of suits are held inapplicable to foreign corporations.

Counties.

The law requiring a board of supervisors to "meet at the court-house" is held, in Harris v. State, Dolan (Miss.) 33 L. R. A. 85, to be insufficiently complied with by meeting in another building outside of the inclosure of the court-house, although it had one door which opened into such inclosure, — especially when the meeting was held in a room which

had no interior connection with such inclosure, and action at a meeting in such place is held void.

Courts.

A statute establishing for a county an additional court to sit at a place other than the county-seat is upheld in Woods *v.* McCay (Ind.) 33 L. R. A. 97, against the objection that there could not be two courts holding their sessions at different places.

A bill for a receiver, filed by order of a Federal court is held, in Riesner *v.* Gulf, C. & S. F. R. Co. (Tex.) 33 L. R. A. 171, to be sufficient to give priority of jurisdiction as against a subsequent garnishment under process of a state court, although this was issued before service upon the defendant in the suit for a receiver, if a receiver was appointed in due time.

Criminal Law.

An enactment by a city council that no prosecution for violation of a specified ordinance shall be commenced except upon the complaint of a police officer is held, in State *v.* Robitshek (Minn.) 33 L. R. A. 33, to be within the power of the council on the ground that prosecutions under municipal ordinances are not criminal proceedings.

An ordinance establishing a private institution as a workhouse for female prisoners is held, in Farmer *v.* St. Paul (Minn.) 33 L. R. A. 199, to be void; yet such institution, after having in good faith received and boarded such prisoners under an invalid contract with the city, was held entitled to compensation.

Searching the office of an accused person with the consent and aid of his servant and agent in possession, in order to obtain evidence against the accused, is held, in State *v.* Griswold (Conn.) 33 L. R. A. 227, to constitute no violation of the constitutional provision against unreasonable searches; and the taking away of an article found there, with the consent of the agent, is held not to be a "seizure."

Damages.

For what is called a conversion of a judgment by wrongful discharge thereof made by a former member of a partnership which owned the judgment, the measure of damages is held, in Langford *v.* Rivinus (C. C. App. 2d C.) 33 L. R. A. 250, to be the value of the judgment at that date.

Descent.

A child adopted in another state in substantial compliance with the statutes thereof is held, in Gray *v.* Holmes (Kan.) 33 L. R. A. 207, to have capacity to inherit lands of the adopting parent on equal terms with any other child.

Easements.

The extent of an easement to use a wall of an adjoining owner for the support of a building when it was acquired by prescription, is held, in Barry *v.* Edlavitch (Md.) 33 L. R. A. 294, to be the enjoyment of the use of the wall as it existed during the period of prescription, and not to extend to an addition to the wall thereafter made by the owner thereof.

Eviction.

An eviction of a life tenant from a room in a house is held, in Grove *v.* Youell (Mich.) 33 L. R. A. 297, to be made so as to constitute a breach of a bond securing the right to its occupancy, when access to the room by passing through the house is denied, and there is no other mode of access thereto, and occupation is abandoned in consequence thereof.

Fisheries.

A statute restricting the right of the owner of a lake to take fish therefrom to a specified method is sustained in Peters *v.* State (Tenn.) 33 L. R. A. 114; and the exception therefrom of private ponds is held not to extend to a so-called lake covering an area of 1,040 acres, of which one person owns 1,000 acres and another 40 acres.

Health.

Compensation for the use of a hotel for a hospital during quarantine because of the existence of smallpox therein, and for the destruction of the infected property and the burial of a person who died of smallpox, is held, in Safford *v.* Board of Health of Detroit (Mich.) 33 L. R. A. 300, to be due to the owner of the hotel, under Mich. Local Laws 1893, No. 403.

Highways.

Liability of the public for the condition of a foot-path across a bend in the highway

and along the edge of a mill-dam and over waste gates is held, in State, James, v. Kent County (Md.) 33 L. R. A. 291, not to be created by the frequent use of such path by the public for fifty years without any dedication or acceptance thereof.

Insurance.

Fraud in inducing the insured to change the beneficiaries in his certificate of life insurance, when he had a right to make the change, is held, in Hoeft v. Supreme Lodge Knights of Honor (Cal.) 33 L. R. A. 174, to give the former beneficiaries no right to the proceeds as against the new beneficiaries, where the insurer did not contest the validity of the insurance.

The proceeds of insurance obtained by a life tenant on a total loss of buildings insured in his own interest for their full value are held, in Harrison v. Pepper (Mass.) 33 L. R. A. 239, to belong to him, even if they are more than the value of his interest, and the remaindermen cannot compel him to use the proceeds in rebuilding or to account to them for the money.

Each of two parcels of insured property is held to be covered to the full amount thereof, in Page v. Sun Ins. Office (C. C. App. 8th C.) 33 L. R. A. 249, when but one parcel was injured and that is also covered by a separate policy which provides that the insurer in case of loss shall not be liable for a greater proportion of the loss than the policy bears to the whole insurance.

The proceeds of insurance on a city hall held and used for municipal purposes are held in Ellis v. Pratt City (Ala.) 33 L. R. A. 264, to be exempt from garnishment by a creditor of the city, even when a new city hall has been already erected from other funds before the insurance money is collected.

A state statute discriminating between citizens of that state and of other states by requiring any company, association, firm, or individual not of that state to be possessed of certain securities before transacting insurance business in the state, is held, in State, Hoadley, v. Board of Insurance Comrs. (Fla.) 33 L. R. A. 288, to make an unconstitutional denial of equal privileges and immunities.

Judgment.

A warrant of attorney to confess judgment on a note "in any court of record" is held, in First Nat. Bank v. Garland (Mich.) 33 L. R. A. 83, to be sufficient to sustain a judgment of a court of the state in which the note was made, when sued upon in another state, even if the judgment could not have been confessed outside the state in which the note was made.

Lateral Support.

A peculiar case of injury to lateral support by digging a sewer trench in a street and permitting quicksand and water to run into it, and then removing them by pumps, causing the surface of the land to crack and settle and injuring the buildings thereon, is held, in Cabot v. Kingman (Mass.) 33 L. R. A. 45, to make the sewer commissioners liable if they knew the nature of the soil or ought to have known it, and did not require any unusual and extraordinary precautions to be taken by the contractor.

An excavation on one's own land without precaution to prevent the caving in of a neighbor's land is held, in Gildersleeve v. Hammond (Mich.) 33 L. R. A. 46, to create a liability for damages to a building drawn into the excavation, and which did not by its pressure cause the land to fall.

Libel.

The liability of a telegraph company for sending a libelous message is adjudged in Peterson v. Western Union Telegraph Co. (Minn.) 33 L. R. A. 302, where the message was on its face susceptible of a libelous meaning and there was evidence to show that it was published maliciously.

Mortgages.

A statute requiring a chattel mortgage to be "forthwith" filed in order to make it valid as against creditors and subsequent purchasers or lien holders is held, in Baker v. Smelser (Tex.) 33 L. R. A. 163, to have been complied with when the mortgage was filed as soon as possible, and it is then held to take effect from delivery as against an intermediate attachment.

Tender to a mortgagee of the principal, interest, and costs after maturity of the debt and before any sale or foreclosure proceedings have been begun, is held, in Parker v. Beasley (N. C.) 33 L. R. A. 231, to be effectual only to stop interest and save subsequent costs, if the tender is refused and the money is not deposited or kept ready for the mortgagee in case of demand or tendered on the trial.

Public Buildings.

A lease of rooms in a court-house to be used for private purposes is held, in State, Scott, *v.* Hart (Ind.) 33 L. R. A. 118, to be unlawful when made by county commissioners in the absence of statutory authority.

Railroads.

The neglect to give signals of a train at a crossing, which by the South Carolina statute renders the railroad company liable for a collision to which such neglect contributes, is held, in Wragge *v.* South Carolina & G. R. Co. (S. C.) 33 L. R. A. 191, to create such liability if the neglect has any share or agency in bringing about the disaster, although it was not the efficient or proximate cause thereof and the injury might have occurred if the signals had been given.

Sale.

The rule that a purchaser is entitled to the same article that he bargains for, is applied in Columbian Iron Works & D. D. Co. *v.* Douglas (Md.) 33 L. R. A. 103, by deciding that a contract for the purchase of steel scrap consisting of clippings and punchings from the steel plates, angles, and beams of United States cruisers, is not satisfied by the delivery of other materials which were not cruiser steel, no matter what their quality or chemical test may be. The case also decides that an inspection by the purchaser does not relieve the seller from the obligation to furnish articles of the description specified, unless the minds of the parties concurred in substituting an inspection for the description.

Voters and Elections.

Nominations made by two factions of a political party and certified to the secretary of state in due form of law are held, in Phelps *v.* Piper (Neb.) 33 L. R. A. 53, to be properly certified by him to the several county clerks; and the question which of the two factions truly represents the party is not one which he can be compelled to decide.

A statute limiting the right of a voter to vote for part only of the officers to be chosen for a certain office is sustained, in Com., McCormick, *v.* Reeder (Pa.) 33 L. R. A. 141, against the contention that it violates a constitutional right of electors "to vote at all elections,"—especially when long-continued interpretation of the Constitution has sustained such statutes.

Waters.

An injunction against shutting off the supply of water for public purposes is sustained in Bienville Water Supply Co. *v.* Mobile (Ala.) 33 L. R. A. 59, when a water company threatened to shut off the water to enforce a disputed demand for water that had been furnished under a contract with the city.

A peculiar case respecting the division of water between co-owners of a water power is that of Brown *v.* Cooper (Iowa) 33 L. R. A. 61, which holds that the building of weirs for the partition of the water and for improvements by raising the level of the water to facilitate partition, and the appointment of an inspector or supervisor to divide the water and otherwise oversee the property for the joint benefit of the owners, is beyond the power of the court in a suit for partition of the water power, and that if partition in kind cannot be made without this, the property should be sold.

An extensive discussion and review of the authorities as to the private ownership of lakes is made in Fuller *v.* Shedd (Ill.) 33 L. R. A. 146, in which it is decided that lakes, whether large or small, if they are of such size that in making the original survey they are meandered, are subject to the same rule as to riparian rights, and that a grant bounded thereon conveys only to the water's edge with riparian rights, but does not include land under the water.

New Books.

"Mortuary Law." By Sidney Perley. George B. Reed, Boston, Mass. 1 Vol. $3.

"Circumstantial Evidence." By Arthur P. Will. T. W. Johnson & Co., Philadelphia. 1 Vol. $5.

"Law of Evidence in Civil Cases." By Burr W. Jones. Bancroft-Whitney Co., San Francisco, Cal. 3 Vols. (4 x 6 inches.) $7.50.

"Illinois Pleading and Practice." By Roswell Shinn. T. H. Flood & Co., Chicago, Ill. 2 Vols. $12.

"Trial Practice and Appellate Procedure in North and South Dakota." By Charles E. Deland, Pierre, S. D. 1 Vol. $6.

"New York Mechanics' Lien Law, Annotated." By Wm. L. Snyder. Baker, Voorhis, & Co., New York. 1 Vol. $2.50.

The Humorous Side.

SURGICAL INSTRUMENTS.—The instruments of surgery described in a law report were, "a large butcher knife of good temper and metal," and a "carpenter's sash saw."

UNAWED BY THE RESULT.—"We have endeavored not to be unduly swayed in our judgment by the importance of this particular case," said a court recently, in reversing a judgment for $6.

SUUM QUIQUE.—A correspondent unfeelingly intimates that "Case and Comment" "would better get off the dump," because, as he says, "Some fellow down in Missouri has been working off an old gag on you." He refers by this to the verses in our August number headed "Suum Quique," which he says were published in the "New York Sun" in April, 1891. So our one brilliant gleam was after all a reflection of the light of the Sun—mere moonshine.

A LEGAL BULL.—A correspondent sends us the following, which he credits to L'Estrange:—"A controversie being at Bury Assizes, about wintering of cattell before Baron Trevor, then Judge upon the Bench, and the demand being extreame high, 'Why Friend,' says he, 'this is most unreasonable; I wonder thou art not ashamed, for I myself have knowne a beast wintered one whole summer for a noble,' 'that was a Bull, my Lord, I believe,' says the fellow; at which ridiculous expression of the Judge, and slye retorted jeere of the countryman, the whole court fell into a most profuse laughter."

THE AMBASSADOR'S PARROT.—We gather from the "Law Notes," London, the material facts of a serious international crisis. A parrot escaped from the Japanese Embassy in Berlin and alighted in a tree in an adjacent garden. To dislodge the parrot the attachés of the embassy used a garden hose from the wall of the Japanese dominions and incidentally drenched Herr Fleckinhaus, the owner of the garden, who was under the tree. The parrot did not come off the perch but in a mournful voice kept saying "Regenwetter, immer regenwetter." On Herr Fleckinhaus, however, the wet blanket did not have an effect so subduing. "Mad as a wet hen" he rushed to action; and it was an action for trespass brought in the Schöppengericht. An attempt was made to defeat German jurisdiction on account of the extraterritorial character of the embassy, but this failed, and the invasion of Germany by water was punished by judgment for damages.

DISSATISFIED WITH THE PONY.—The opinion of Judge Wilkes in a late Tennessee case describes a tragedy and its consequences:—It was a suit on a note for a Texas pony described as "a small pony mare, well formed, with bright eyes and a remarkably active pair of heels." It appeared that on making the trade defendant was in the act of leading the pony away with an ordinary halter "when the plaintiff suggested that a 'slip halter' would suit the temperament and disposition of the animal better," and advised defendant "not to turn her loose or put her into a stable, but to tie her to a post until she was gentle." Strictly following directions, defendant next morning "came around to see if the pony was making any progress toward getting gentle and found her very quiet,—in fact she was dead. He says that he does not certainly know what caused her death, but thinks it was because 'she could not get her breath.' This seems quite probable, as the 'slip halter' was found to have 'slipped' down and become tightened around her nostrils." The defendant claimed that "he only took the pony on 'probation' for six months and by the contract had the right, at any time he was dissatisfied, to rescind the trade and deliver up the pony," and that while he did not offer to return the pony because he was prevented "by the act of God," "that when he saw that the pony had committed suicide he did not care to keep her any longer, and he therefore exercised his option to rescind the trade." Plaintiff insisted that it was the "act of the pony" which prevented the return, but the defense was held good, and the court said: "We think the weight of the proof was that the defendant was to have the right to rescind the trade at any time within six months, if he became displeased with his bargain, and, having exercised his option, we cannot say that he acted arbitrarily in becoming displeased after the pony had put an end to her further usefulness by means of the device furnished by the plaintiff."

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